

## Message Text

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ORIGIN OPIC-06

INFO OCT-01 AF-10 ISO-00 EB-08 AID-05 COME-00 L-03  
TRSE-00 CIAE-00 INR-10 NSAE-00 AGRE-00 /043 R

DRAFTED BY OPIC/GC RSTERN  
APPROVED BY AF/W:TWMSMITH  
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AF/W:MCEATON

-----108817 251710Z /50

R 251555Z AUG 78  
FM SECSTATE WASHDC  
TO AMEMBASSY NDJAMENA

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FROM OPIC

E.O. 11652: N/A

TAGS: EINV

SUBJECT: AGRICOLA CLAIM

REF: NDJAMENA 3139

1. OPIC IS NOW IN THE FINAL STAGES OF ANALYZING AGRICOLA'S CLAIM OF EXPROPRIATION BY GOC. PROCESSING HAS BEEN PURPOSELY DELAYED IN HOPES OF FACILITATING DISCUSSIONS AND POSSIBLE SETTLEMENT BETWEEN AGRICOLA AND GOC. ALSO, FOR INFORMATION OF EMBASSY ONLY, AGRICOLA HAS NOT YET FURNISHED FINANCIAL STATEMENTS AND OTHER FINANCIAL DATA NECESSARY FOR ANALYZING SOME OF THE ISSUES RAISED IN THIS DISPUTE. AGRICOLA IS BEING REQUESTED TO FURNISH THESE WITHIN 60 DAYS.

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2. TO THIS POINT, OPIC HAS ALWAYS CLEARLY STATED TO THE GOC THAT OPIC HAS MADE NO DETERMINATION WITH RESPECT TO THE VALIDITY OF THE CLAIM, WHILE CONTINUING TO URGE THE GOC TO MAKE A GOOD FAITH EFFORT TO RESOLVE THE DISPUTE. HOWEVER, IT NOW APPEARS THAT NO RESOLUTION WILL BE ACHIEVED UNLESS SOME PRESSURE IS BROUGHT TO BEAR ON THE PARTIES. ACCORDINGLY, OPIC INTENDS TO TAKE A MORE ACTIVE ROLE AS

SOON AS AGRICOLA FINANCIAL DATA IS RECEIVED AND ANALYSIS IS COMPLETED. OPIC NOTES THAT NOT JUST THE ISSUE OF EXPROPRIATION IS INVOLVED. BOTH PARTIES HAVE RAISED ISSUES

OF MISACCOUNTING OF FUNDS AND THE GOC HAS RAISED A QUESTION OF BACK TAXES. IF IT APPEARS THAT SOME NET COMPENSATION MAY BE DUE FROM THE GOC, OPIC WOULD HOPE TO CONFRONT THE GOC WITH INFORMAL, TENTATIVE FINDINGS AND URGE A QUICK, NEGOTIATED SETTLEMENT.

3. IT IS OPIC'S UNDERSTANDING THAT AGRICOLA HAS NO INTEREST IN RECOMMENCING ITS OPERATIONS IN CHAD. HOWEVER, THE GOC'S CONTINUED INTEREST IN AGRICOLA'S RETURN IS BEING COMMUNICATED TO AGRICOLA TO RECONFIRM THIS. IN THIS REGARD OPIC NOTES THAT IN EARLY STAGES OF THIS DISPUTE OPIC URGED GOC ON TWO OCCASIONS TO MOVE QUICKLY TO ESTABLISH A BASIS FOR AGRICOLA TO CONTINUE OPERATIONS OR FACE POSSIBILITY OF FORECLOSING THAT ALTERNATIVE. (THE JANUARY 29, 1976 AGRICOLA PROPOSAL WAS REJECTED RATHER SUMMARILY WHEN FIRST PRESENTED.) THE GOC DID NOT RESPOND AT ALL AT FIRST. IT LATER ENTERED INTO AN INTERIM WORKING ARRANGEMENT WITH AGRICOLA WHICH, ACCORDING TO AGRICOLA, THE GOC FAILED TO HONOR.

4. UNDER THE OPIC CONTRACT, A CLAIM FOR EXPROPRIATORY ACTION MATURES AT THE TIME THE HOST GOVERNMENT ACTION LIMITED OFFICIAL USE

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COMPLAINED OF HAS BEEN IN EFFECT FOR ONE YEAR. AT THAT POINT, THE INSURED INVESTOR CAN COMPEL OPIC TO DETERMINE WHETHER THE ACT GIVES RISE TO A COMPENSABLE CLAIM AND, IF SO, TO PAY COMPENSATION. AS THE AGRICOLA CLAIM MATURED IN 1976, OPIC CANNOT REJECT THE CLAIM ON THE GROUNDS THAT THE GOC IS NOW INVITING AGRICOLA TO RECOMMENCE OPERATIONS. AGRICOLA HAS THE RIGHT TO COMPEL OPIC TO PROCESS THE CLAIM REGARDLESS OF THE GOC'S INVITATION.

5. AS SOON AS OPIC HAS RECEIVED AND EXAMINED AGRICOLA'S OVERDUE FINANCIAL MATERIAL AND COMPLETED ITS ANALYSIS OPIC WILL CONTACT EMBASSY WITH PROPOSED COURSE OF ACTION. THE FACTS AND LEGAL ARGUMENTS IN THIS CASE ARE RATHER COMPLEX, AND OPIC DOES NOT FEEL THAT FURTHER DISCUSSIONS WOULD BE BENEFICIAL UNTIL OPIC'S INTERNAL ANALYSIS IS COMPLETED. IT IS IMPORTANT THAT FURTHER DISCUSSIONS WITH EITHER PARTY BE BASED UPON A THOROUGH KNOWLEDGE OF THE DISPUTED FACTS AND LEGAL PROVISIONS INVOLVED. HOWEVER, EMBASSY MAY WISH TO REASSURE GOC THAT USG IS CAREFULLY EXAMINING THE MATTER AND DOES NOT INTEND TO IMPOSE UNFAIR SETTLEMENT ON EITHER PARTY OR

UNJUSTLY INVOKE HICKENLOOPER OR GONZALEZ SANCTIONS.

6. OPIC THANKS EMBASSY FOR ITS CONTINUING ASSISTANCE.  
DECONTROL FOLLOWING 12/82. CHRISTOPHER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** NATIONALIZATION  
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**Draft Date:** 25 aug 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
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**Disposition Approved on Date:**  
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**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
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**Review Markings:**  
Sheryl P. Walter  
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